

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VII

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

7259 Kaw Drive Drum Site
Kansas City, Kansas

Joe Vaught,

Respondent.

UNILATERAL ADMINISTRATIVE
ORDER FOR REMOVAL RESPONSE
ACTIVITIES

U.S. EPA Region VII

Docket Nos. CERCLA-07-2002-0024
CWA-07-2002-0224

Proceeding Under Section 106(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9606(a), and Sections
311(c) and (e) of the Federal Water
Pollution Control Act, as amended 33
U.S.C. §§ 1321(c) and (e).

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B and to the Regional Administrator of EPA Region VII by EPA Delegation No. 14-14-C, and further delegated to the Director, Superfund Division with the concurrence of the Regional Counsel or his/her designee by Regional Delegation No. R7-14-14-C. This Order is also issued pursuant to the authority vested in the President of the United States by Sections 311(c) and (e) of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1321(c) and (e), as amended ("CWA"). This authority has been delegated to the Administrator of the United States Protection Agency ("EPA") by Executive Order No. 12777, 58 Federal Register 54757 (October 22, 1991), and further delegated to the Regional Administrators by EPA Delegation Nos. 2-85, 2-89.

2. This Order pertains to property located at 7259 Kaw Drive in Kansas City, Wyandotte County, Kansas, the "7259 Kaw Drive Drum Site" or the "Site". This Order requires the Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of oil or hazardous substances at or from the Site. EPA has notified the State of Kansas of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a) and Section 311(e)(I)(B) of the CWA, 33 U.S.C. § 1321(e)(I)(B).

II. PARTIES BOUND

3. This Order applies to and is binding upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

4. Respondent shall ensure that his contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. In addition, unless otherwise expressly provided herein, terms used under this order which are defined in the CWA or in regulations promulgated under the CWA shall have the meaning assigned to them in the CWA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 1251, et seq.

b. "Clean Water Act" or "CWA" shall mean the Federal Water Pollution Control Act, as amended 33 U.S.C. §§ 1251, et seq.

c. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday or Federal holiday, the period shall run until the close of business of the next working day.

d. "Discharge" shall have the meaning set forth in § 311(c)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. Part 110.1.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

g. "KDHE" shall mean the Kansas Department of Health and Environment.

h. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

i. "Navigable waters of the United States" shall have the meaning set forth in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. Part 110.

j. "Oil" as used in this Order shall have the meaning set forth in Section 311(a)(I) of the CWA, 33 U.S.C. § 1321(a)(I).

k. "Order" or "Unilateral Order" shall mean this Unilateral Administrative Order and all appendices attached hereto. In the event of a conflict between this order and any appendix, this Order shall control.

l. "Oversight Costs" shall mean all costs incurred by EPA in overseeing the Work to be performed by Respondent under this Unilateral Order, other than costs incurred by EPA in enforcing this Unilateral Order as a result of any noncompliance by Respondent with the requirements of the Order.

m. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral and/or a lower case letter.

n. "Parties" shall mean the United States Environmental Protection Agency and the Respondent.

o. "Past Response Costs" shall mean all response costs incurred by EPA with respect to this Site prior to the effective date of this Unilateral Order.

p. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

q. "Removal Action" shall mean those activities to be undertaken by the Respondent to implement the Work in accordance with the SOW (Appendix A) and the final Removal Action Work Plan and any other plans approved by EPA.

- r. "Removal Action Work Plan" shall mean the document developed by Respondent pursuant to this Order and approved by EPA, and any amendments thereto.
- s. "Respondent" shall mean Joe Vaught.
- t. "Section" shall mean a portion of this Order identified by a Roman numeral.
- u. "Site" shall mean the Kaw Drive Drum Superfund Site, located at 7259 Kaw Drive, Kansas City, Kansas, consisting of approximately 4.7 acres.
- v. "State" shall mean the State of Kansas.
- w. "Statement of Work" or "SOW" shall mean the statement of work set forth in Appendix A to this Order and any modifications thereto made in accordance with the terms of this Order. The SOW is hereby incorporated into and made an enforceable part of this Order.
- x. "Supervising Contractor" shall mean the principal contractor retained by the Respondent to supervise and direct the implementation of the Work under this Order.
- y. "United States" shall mean the United States of America.

IV. FINDINGS OF FACT

6. The Site is an abandoned dump area located at 7259 Kaw Drive in Kansas City, Kansas. Joe Vaught is the current owner of the Site.

7. The Site consists of approximately 4.7 acres of land, the majority of which is overgrown with weeds. One large building housing two businesses is located on the northwest corner of the property. The southern 1/3 of the property is strewn with abandoned vehicles, trailers, and boats. The drummed and containerized wastes are located in this area of the Site. The Kansas River is adjacent to the southern portion of the Site.

8. On September 10, 2001, KDHE contacted the EPA Region VII's Superfund Division to ask for assistance in conducting a preliminary assessment at the Site. On September 11, 2001, a response team consisting of EPA's On-Scene Coordinator, EPA contractors, and a KDHE representative investigated the Site. The response team observed the presence of abandoned drums and containers containing wastes scattered throughout the southern third of the Site and in trailers at the Site.

9. Approximately 50 drums and 18 small containers of waste are located at the Site. Many of the abandoned drums and containers are not protected from weather conditions. Access to the Site is not limited by fencing, gates or other means. Many of the containers are located on or near the bank of the Kansas River, and portions of the river bank are caving in at the Site.

10. During the September 11, 2001 preliminary assessment of the Site, the response team observed that abandoned waste containers found at the Site contain paint wastes, waste oils, and waste anti-freeze. These materials typically contain hazardous substances, including lead, toluene, ethylbenzene, xylene, benzene, cadmium and mercury. Labels on some of the containers read motor oil, laquer thinner, hydraulic oil, and torque fluid.

11. The containers were sampled for field screening and laboratory confirmation analysis on May 8-9, 2002. Of the samples submitted for laboratory analysis, several exhibited the RCRA hazardous waste characteristic of ignitability due to failing the Seta Flash test, igniting at less than 140° F. Most of the drums sampled for laboratory analysis revealed high concentrations (sometimes percent levels) of solvents containing the following chemicals: acetone, ethyl benzene, toluene, xylene, benzene, and tetrachoroethene. This makes some of the waste characteristic hazardous waste for toxicity, failing the toxicity characteristic leaching procedure (TCLP). One drum contained high levels of polynuclear aromatic hydrocarbons (PAHs).

12. There is a continued risk of fire or explosion from the materials at the Site.

13. Other potential routes of human exposure to hazardous substances at the Site are ingestion of and direct contact with contaminated materials due to leakage of materials from rusted and deteriorating drums.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

14. The Kaw Drive Drum Superfund Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and Section 311(a) of the CWA, 33 U.S.C. § 1321(a).

15. The contaminants found at the Site, as identified in the Findings of Fact above, include "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and "oil" as defined by Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

16. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

17. Respondent Joe Vaught is the "owner" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), and as defined by Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(b).

18. Respondent is a "liable party" pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is therefore subject to this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

19. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).

20. The conditions present at the Site constitute an imminent and substantial endangerment to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substance Pollution Contingency Plan, as amended, 40 C.F.R. Part 300 ("NCP"). These factors include, but are not limited to, the following:

- a. hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;
- b. threat of fire or explosion.

21. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

22. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA. Further, these measures are necessary to ensure effective and immediate prevention of a substantial threat of a

discharge of oil into navigable waters.

VI. ORDER

23. Effective Date: Upon receipt by Respondent.

24. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondent comply with the following provisions, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

a. Notice of Intent to Comply

i. Respondent shall notify EPA in writing within ten (10) days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of Respondent to provide such notification within this time period shall be a violation of this Order by Respondent.

b. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

i. Respondent shall perform the removal action itself or retain a contractor to perform the removal action. Respondent shall notify EPA of Respondent's qualifications or the name and qualifications of such contractor within twenty (20) days of the effective date of this Order. Respondent shall also notify EPA of the names and qualifications of any other contractors or subcontractors retained to perform the removal action under this Order at least seven (7) days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents, or of Respondent's choice of itself to do the removal action. If EPA disapproves of a selected contractor or Respondent, Respondent shall retain a different contractor or notify EPA that it will perform the removal action itself within seven (7) days following EPA's disapproval and shall notify EPA of that contractor's name or Respondent's name and qualifications within seven (7) days of EPA's disapproval.

ii. Within twenty (20) days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all

the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name and qualifications within twenty-one (21) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

iii. The EPA has designated Eric Nold of EPA's Region VII Superfund Division, Enforcement/Fund-Lead Removal Branch, as its On-Scene Coordinator (OSC). Respondent shall direct all submissions required by this Order to the OSC at:

Eric Nold, OSC
U.S. EPA Region VII-Superfund
901 North 5th Street
Kansas City, Kansas 66101
Telephone 913-551-7488
Facsimile 913-551-7948

iv. Unless otherwise specified herein, all submissions shall be in writing and shall be sent by regular mail to the address above (or by facsimile followed by regular mail).

c. Work to Be Performed

Respondent shall perform, at a minimum, the response actions specified in the Statement of Work which is attached to and a part of this Order.

i. Work Plan and Implementation

(1) Within thirty (30) days after the effective date of this Order, the Respondent(s) shall submit to EPA for approval a Removal Action Work Plan ("RAWP") for performing the removal action set forth above. The RAWP shall provide a detailed description of an expeditious, detailed schedule for the methods and procedures used in conducting this response action.

(2) EPA may approve, disapprove, require revisions to, or modify the RAWP. If EPA requires revisions, Respondent shall submit a revised RAWP within twenty (20) days of receipt of EPA's notification of the required revisions.

(3) Respondent shall implement the RAWP as finally approved in writing by EPA in accordance with the schedule approved by EPA.

(4) Once approved, or approved with modifications, the RAWP, the schedule, and any subsequent modifications shall be fully enforceable under this Order.

(5) Respondent shall notify EPA at least forty-eight (48) hours prior to performing any on-site work pursuant to the EPA approved RAWP. Respondent shall not commence or undertake any removal actions at the Site without prior EPA approval.

(6) The RAWP shall include at a minimum, the following information:

- a. Brief background of the Site, including the physical location.
- b. Plan for securing the site so that no vandalism of the containers onsite can occur and so that no additional dumping of containerized waste occurs.
- c. Plan for inventorying, overpacking if necessary, and removal of all drums and other containers. The materials in drums and other containers will be disposed of at a facility which is in compliance with the CERCLA off-site policy as set forth in 40 C.F.R. § 300.440 of the NCP.
- d. Method(s) to be used in segregating and/or bulking drums and other containers. This may include additional sampling and analysis if necessary as well as compatibility testing prior to any bulking of waste streams.

- e. Method(s) to be used for transporting and disposing of all wastes and any visibly contaminated soil if found.

(7) The RAWP shall also describe in detail how Respondent will meet all Applicable Relevant and Appropriate Requirements (ARARs) and comply with Federal, state, and local laws and regulations in conducting Work under this Order.

(8) The RAWP shall contain a time line identifying, at a minimum, dates of the following:

- a. Expected mobilization date;
- b. Expected time durations of response activities; and
- c. Submission of the final response action report.

ii. Health and Safety Plan

(1) Within thirty (30) days after the effective date of this Order, the Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide, (November 1984, updated July 1988). In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations; Hazardous Waste Operations and Emergency Response; found at 29 CFR Part 1910.

(2) Respondent shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

iii. Quality Assurance and Sampling

(1) All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow the following documents as appropriate as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal

Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08.

(2) Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

(3) Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing actions under this Order. Respondent shall notify EPA not less than ten (10) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

iv. Reporting

(1) Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every thirtieth (30th) day after the date of receipt of EPA's approval of the RAWP until termination of this Order, unless otherwise directed by the OSC (in writing). These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

(2) Any Respondent and Successor in title shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice to EPA of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Section Four of this Order - Access to Property and Information.

v. Final Report

(1) Within sixty (60) days after completion of all removal actions required under this Order, the Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports". The final report shall include a good faith estimate of total costs or statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

(2) The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

d. Access to Property and Information

i. Respondent shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this order, and provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Kansas representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, the results of all sampling or tests and all other data generated by Respondent or its contractors, or on the Respondent's behalf during

implementation of this Order.

ii. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within thirty (30) days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. Respondent shall describe in writing its effort to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondent for all costs and attorney's fees incurred by the United States in obtaining access for Respondent.

e. Record Retention, Documentation, Availability of Information

i. Respondent shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten (10) years following completion of the removal actions required by this Order. At the end of this ten (10) year period and thirty (30) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the ten (10) year period at the written request of EPA.

ii. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondent(s). EPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by

EPA, EPA may make it available to the public without further notice to Respondent.

f. Off-Site Shipments

i. All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. § 9621(d)(3) and the following rule:

"Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Actions: Final Rule" 58 Fed. Reg. 49,200 (September 22, 1993) codified at 40 C.F.R. § 300.440. Regional Offices will provide information on the acceptability of a facility under Section 121(d)(3) of CERCLA and the above rule.

g. Compliance With Other Laws

i. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA section 121(e) and 40 C.F.R. section 300.415(i). In accordance with 40 C.F.R. § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental, state environmental, or facility siting laws. (see "The Superfund Removal Procedures for Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991.)

h. Emergency Response and Notification of Releases

i. If any incident, or change in site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action. The Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his

unavailability, shall notify the Regional Duty Officer at the Emergency Response and Removal Branch, Superfund Division, Region VII, (913) 281-0991, of the incident or site conditions. If Respondent fails to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

ii. In addition, in the event of any release of a hazardous substance, Respondent shall immediately notify EPA's OSC at telephone number (913) 551-7488, and the National Response Center at telephone number (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA Section 103(c) and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Sections 11001 et seq.

VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

25. The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 CFR 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal action undertaken by EPA or Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

26. EPA and Respondent shall have the right to change their designated OSC or Project Coordinator. EPA shall notify the Respondent, and Respondent shall notify EPA, three days before such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice.

VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

27. Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a

result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

IX. REIMBURSEMENT OF OVERSIGHT COSTS

28. Respondent shall reimburse EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. Upon completion of the work, EPA will submit to Respondent a bill for all response costs incurred by the United States with respect to this Order. EPA's Financial Management System summary data shall serve as the basis for payment demands.

29. Respondent shall, within thirty (30) days of receipt of the bill, remit a cashiers or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

Mellon Bank
Attn: Superfund Accounting
EPA Region VII
(Comptroller Branch)
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

30. Respondent shall simultaneously transmit a copy of the check to EPA Region VII, 901 N. 5th Street, Kansas City, Kansas, 66101. Payments shall be designated as "Response Costs- Kaw Drive Drums Superfund Site" and shall reference the payor's name and address, the EPA site identification number (0704244) and the docket number of this Order.

31. Interest at the rate established under Section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

X. RESERVATION OF RIGHTS

32. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public

health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. Section 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

XI. OTHER CLAIMS

32. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

33. This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

34. Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9606(a) and 9607(a).

XII. MODIFICATIONS

35. Modifications to any plan or schedule or the attached EPA Statement of Work may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within seven (7) days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any

other portion of the Order may only be modified in writing by signature of the delegated signatory or designee of EPA Region VII.

36. If Respondent seeks permission to deviate from any approved plan or schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

37. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XIII. NOTICE OF COMPLETION

38. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide notice to the Respondent. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the RAWP to correct such deficiencies. The Respondent shall implement the modified and approved RAWP and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified RAWP shall be a violation of this Order.

XIV. ACCESS TO ADMINISTRATIVE RECORD

39. The Administrative Record supporting these removal actions will be available for review at EPA Region VII, 901 N. 5th Street, Kansas City, Kansas, 66101 within fourteen (14) days of the effective date of this order.

XV. OPPORTUNITY TO CONFER

40. Within three (3) days after effective date of this Order, Respondent may request a conference with EPA. Any such conference shall be held within five (5) days after the effective date unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

41. If a conference is held, Respondent may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, arguments or comments in writing to EPA within two (2) days following the conference, or within seven (7) days following effective date of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to David Cozad, EPA Region VII, Associate Regional Counsel, at (913) 551-7587, 901 N. 5th Street, Kansas City, Kansas, 66101.

XVI. INSURANCE

42. At least seven (7) days prior to commencing any on-site work under this Order, the Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of three hundred thousand dollar (\$300,000) combined single limit. Within the same time period, the Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondent needs to provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XVII. SEVERABILITY

44. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XVIII. EFFECTIVE DATE

45. This Order shall be effective upon receipt by Respondent of the Order.

IT IS SO ORDERED

BY: James B. Gulliford

DATE: 10/30/02

James B. Gulliford
Regional Administrator
Region VII
U.S. Environmental Protection Agency

APPENDIX A
STATEMENT OF WORK
7259 KAW DRIVE DRUM SITE
KANSAS CITY, KANSAS

Task 1 - Response Action Work Plan

1. Respondent shall develop and submit for EPA review and approval a Removal Action Work Plan ("RAWP") that describes in detail methods and procedures used in conducting this response action. The RAWP shall include at a minimum, the following information:
 - a. Brief background of the Site, including the physical location.
 - b. Plan for inventory, characterization (using existing and pending analytical data supplied by EPA or additional analytical data if necessary), and removal of all drums and other containers. The materials in drums and other containers will be disposed of at a facility which is in compliance with the CERCLA off-site policy as set forth in 40 C.F.R. §300.440 of the NCP.
 - c. Method(s) to be used in inventorying, bulking, and segregating drums and other containers.
 - d. Method(s) to be used for transporting and disposing of all wastes and visibly contaminated soil.
2. The RAWP shall also describe in detail how Respondent will meet all Applicable Relevant and Appropriate Requirements (ARARs) and comply with Federal, state, and local laws and regulations in conducting Work under this Order.
3. The RAWP shall contain a time line identifying, at a minimum, dates of the following:
 - a. Expected mobilization date;
 - b. Expected time durations of response activities; and
 - c. Submission of the final response action report.

Task 2 - Health and Safety Plan.

1. Respondent shall prepare and submit for EPA review and comment a written Site Health and Safety Plan in accordance with 29 C.F.R. Part 1910.120. This plan shall also include an emergency response plan that details procedures to be followed should an accident and/or release of hazardous substances occur at the Site. This plan shall also include a provision to notify EPA's OSC in addition to regulatory notifications.

Task 3 - Removal Action.

1. The objective of this response action is to remove the immediate threat posed by the drums and other containers. The response action consists of the removal and off-site disposal of the drums and other containers at the Site.
2. Respondent shall properly characterize, using completed and pending analytical data and field screening data previously collected by EPA and additional analytical data if necessary, all wastes found on-site, and then load, haul, and remove from the Site all waste containers, all contaminated soil from spilled or leaking containers, and all other hazardous substances found at the Site, including discarded or abandoned batteries.
3. Respondent shall ensure that loading and transportation of materials from this Site is conducted in accordance with Federal, State, and/or local rules and regulations governing the mode of transportation to be used. Extreme care shall be taken to load and cover materials so that no release occurs during normal transport. If a release of materials does occur during transport, Respondent shall take immediate actions to control and/or mitigate the release and to notify the appropriate regulatory authorities. In addition, Respondent shall notify the EPA OSC at (913) 551-7488 of such release.
4. Respondent shall ensure that all Site-derived wastes are managed and disposed of as either hazardous waste, and/or solid waste as required by law or regulation in accordance with the rules and regulations of the State of Kansas and/or the state where the material is to be disposed. If the state where disposal will occur has no such rules and regulation, Federal rules will apply. Off-site disposal shall be in accordance with all applicable laws and regulations including the RCRA regulations at 40 C.F.R. Part 260 et seq. (including the Land Disposal Restrictions at 40 C.F.R. Part 268). In addition, the materials removed from the Site shall be disposed of at a facility which is in compliance with the CERCLA off-site policy as set forth in 40 C.F.R. §300.440 of the NCP. All waste materials, whether hazardous or non-hazardous, shall be tracked and documented from point of origin (the Site) to the point of ultimate disposal. Respondent shall notify the OSC of the disposal facility or facilities to be used for all materials prior to transport of the materials from the Site.

Task 4 - Activity Reporting

1. Respondent shall prepare a Final Report that summarizes all activities conducted at the Site during this removal action. This report shall be due to EPA no later than sixty (60) days after completion of all work required by this Order. This report shall also include, at a minimum, the following:
 - a. Copies of all hazardous waste manifests or other appropriate shipping papers that describe the origin and destination, amount, and description of all waste materials being transported off-site. These shipping papers must also identify the transporter, the date the materials were shipped, and the date the materials were received by the ultimate disposal facility. All shipping papers must be signed by the generator (Respondents), the transporter, and the disposal facility;
 - b. Copies of all results of chemical or physical analyses conducted during this removal action, including the results of any field screening or other "on-site" analyses;
 - c. Copies of any and all sampling documentation including field sheets and chain-of-custody sheets;
 - d. Copies of any and all pertinent photographs taken during response activities; and
 - e. A narrative explanation of all activities that occurred during the removal action.